THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15685 of 2007

Dated: 24-07-2007

Between:

Mukkamala Prasad Chowdary and another.

..... PETITIONERS

AND

The Mandal Revenue Officer, Penamaluru, Krishna District, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The two petitioners are aggrieved by the proceedings/order of first respondent bearing Rc.No.677/06 dated 26.06.2007. They, therefore, filed instant writ petition seeking a writ of Mandamus declaring the impugned order as illegal, without jurisdiction and violative of Articles 14 and 19(6) of the Constitution of India.

First petitioner purchased an extent of Ac.1.78 in survey Nos.230/1D and 230/1F to 230/1J from M/s Akunuru Fakeeraiah, Akunuru Panakalu, Akunuru Subbaiah, Akunuru Ramadasu, Tenneti Sri Kari and Akunuru Venkata Subbaiah under registered sale deeds and second respondent purchased Ac.1.19 in survey Nos.230/1A to 230/1C and 230/1E from M/s Kondapamuluru Suryanarayana, Tenneti Srikari and Akunuru Venkateswara Rao under registered sale deeds in 1999. They contend that the land is ancestral property of their vendors, which is not assigned land and in spite of the same, first respondent initiated action under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity) and issued notice calling upon them (petitioners) to show-cause as to why the land in their possession should not be resumed. The petitioners submitted explanation opposing the resumption. After considering the same, the impugned order dated 26.06.2007 came to be passed. The petitioners then moved second respondent by filing an appeal under Section 4-A of the Act and the same is pending. However, they filed instant writ petition contending that the order passed by first respondent is without jurisdiction as the land in their occupation is not assigned land.

The learned counsel for the petitioners vehemently contends that first respondent gets jurisdiction to resume the land only when it is proved that the land in occupation of a person is assigned land. She submits that the land purchased by the petitioners is undisputedly the property of their vendors' ancestors since 1890s as evidenced by the judgment dated 21.03.1904 in O.S.No.14 of 1903 on the file of the Court of the District Munsif, Bezwada.

The learned Assistant Government Pleader for Revenue, after getting instructions, submits that the appeal filed by the petitioners before second respondent is still pending and therefore, the writ petition would not lie.

There cannot be any dispute that a citizen cannot avail the statutory remedy of appeal and a writ petition simultaneously. The petitioners admittedly filed an appeal against the impugned order before second respondent and unless and until they exhaust such remedy, the writ petition would not lie. Therefore, this Court is not inclined to go into

the question. It is also open to the petitioners to approach second respondent, obtain appropriate interim orders, if they are still in possession of the land as alleged.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

24th July, 2007
ghn